

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM:

THE HON'BLE DR.JUSTICE **S.VIMALA**

W.P.Nos.27064 and 26120 of 2018

W.P.No.27064 of 2018

V.Premakumari

... Petitioner

versus

1. The Government of Tamil Nadu
Rep. by its Secretary,
School Education Department,
Fort St. George, Chennai – 9.
2. The Teachers Recruitment Board,
Rep. by its Member Secretary,
4th Floor, EVK Sampath Building,
DPI Campus,
College Road, Chennai – 600 006.
3. The Director of School Education,
College Road,
Chennai – 6.
4. The Joint Director,
School Education (Secondary),
College Road, Chennai – 6.
5. The Chief Educational Officer,
Ariyalur, Ariyalur District.
6. The District Educational Officer,
Ariyalur, Ariyalur District.
7. The Headmaster,
Govt. Higher Secondary School,
Kizhapazhuvur, Ariyalur – 621 707.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus, to call for the records relating to the order of the 4th respondent passed in his proceedings Na.Ka.No.76064/C3/E2/2014 dated 14.09.2018 communicated through the 5th respondent in his proceedings Na.Ka.No.0640/B1/2009 dated 01.10.2018 served on the petitioner on 03.10.2018 and quash the same and direct the respondents 4 and 5 to permit the petitioner to continuously serve as B.T.Asst (Maths) in the 7th respondent school and with salary, annual increments from the year 2007, Selection Grade Pay on completion of 10 years of service, i.e. from 01.06.2016 and 7th pay commission benefits with all other benefits.

For Petitioner : Mr.K.Venkatramani,
Senior Counsel
for M/s.V.Krishnamurthy

For Respondents : Mrs.Narmadha Sampath,
Additional Advocate General
Assisted by Mrs.P.Kavitha,
Government Advocate (Education)

W.P.No.26120 of 2018

S.Aruna

... Petitioner

versus

1. The Director of School Education,
DPI Campus,
Chennai – 600 006.

2. The Joint Director of School
Education (Personnel)
DPI Campus,
Chennai – 600 006.

3. The Chief Educational Officer,
Villupuram District,
Villupuram.

4. The Head Master,
Government Girls Higher Secondary School,
Devapandalam 606 402
Sankarapuram Taluk,
Villupuram.

5. The Member Secretary,
Teachers Recruitment Board,
DPI Campus,
Chennai – 600 006.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the second respondent in relation to the impugned order in Na.Ka.No.025824/C3/E2/2016 dated 14.09.2018 and the consequential order in Na.Ka.No.101/2018 dated 28.09.2018 issued by the fourth respondent and to quash the same.

For Petitioner : M/s.Dakshyani Reddy
For Respondents : Mrs.Narmadha Sampath,
Additional Advocate General
Assisted by Mrs.P.Kavitha,
Government Advocate (Education)

COMMON ORDER

The order of appointment issued to the petitioner by the proceedings dated 14.08.2006 was cancelled by the impugned order dated 14.09.2018 (after 12 years) which is under challenge in the writ petition in W.P.No.27064 of 2018.

1.1. The impugned order is justified on the contention that even in the appointment order, in clause 20, it is intimated that if the qualification certificates or other certificates are shown to be not proved or it cannot be valued, the appointment is liable to be set aside and therefore, the order of cancellation is in accordance with the Rule.

2. W.P.No.26120 of 2018 is filed by one Aruna, challenging the dismissal order dated 14.09.2018 by which, the appointment of the petitioner has been cancelled on the ground that there is violation of clause 19 and clause 20 of the order of appointment, which stipulates that the appointment order is liable to be set aside even without prior notice when comes to notice that certificates relating to educational qualification and other details are found to be untrue or it has no value.

3. As the issue involved in both the cases are one and the same, common order is pronounced.

4. It is an admitted case of both the parties that the recruitment was for the post of Teacher in Mathematics having B.Sc. (Mathematics) as a basic degree. It is also an admitted fact that petitioner in both the cases are Graduates, B.Sc. (Computer Science) with Mathematics as ancillary subject. It is the case of the petitioners that they have later on qualified themselves by obtaining Degree in Mathematics by studying in Open University.

5. The petitioners relied upon the earlier order passed by this Court in W.P.No.22996 of 2012 dated 17.10.2012, where under, the impugned order of termination was set aside on the ground that the petitioners therein had served

in the post of B.T. Assistant for more than 10 years and the said order has also been implemented.

6. The learned counsel for the petitioners pointed out that the petitioners have performed to the satisfaction of the superior and they have given results ranging from 91% to 100% and it was 100% for a continuous period of five years (2007-2008, 2009-2010, 2010-2011, 2012-2013, 2014-2015).

7. The learned Additional Advocate General appearing for the respondents has submitted that the cancellation is only in tune with para-20 of the order of appointment, which provides a fore warning that if the certificates are shown to be false or invaluable, then the appointment is likely to be cancelled, without any prior notice. But this contention cannot be accepted as the earlier part of para-20 gives a stipulation that the genuineness of the graduation certificate and +2 certificate **must be ascertained immediately** and not after ten years. Even assuming that it was done belatedly, the fault was not exclusively on the part of the petitioners. The respondent had the provision for verification of certificates. It is not the case of the respondents that the petitioners have manipulated the qualification certificates.

8. The learned counsel for the respondent would submit that the petitioner committed manipulation while filling up the application form itself and

relies upon the copy of the application form wherein in paragraph 7 relating to Educational Qualification. There are two entries, one relating to higher education in which the main subject is stated to be Maths. The next column relating to educational qualification, it is stated Computer Science and mathematics as an ancillary subject.

9. The counsel for the respondent would submit that there is some correction in the column No.6 and 7.

This Court wanted the respondents to produce the original application Form. But, the respondents were not able to furnish the same on the ground that documents have been destroyed after the expiry of 10 years and therefore, the documents are not available. The law takes care of all these situations and that is why the belated actions are not approved.

10. The learned counsel for the petitioners submitted that petitioners have completed B.Sc. Mathematics also after entering into service and the disqualification has been rectified and therefore, the impugned order cannot be sustained.

11. The learned counsel for the petitioner relied upon the following decision in order to support the proposition that when the petitioners are not

guilty of having projected their qualification, other than what they possess and if the selection committee has chosen them for some reason or other and if the respondent has chosen to acquiesce in the appointment, it would be iniquitous to terminate the petitioner.

13. Reliance was placed by the petitioners on the following decisions:-

(i) M.S.Mudhol and another vs. S.D.Halegkar and others (1993 (3) SCC 591)

“6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, inspite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequities to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.”

(ii) V.Natarajan vs. Principal District Judge (1979 1 MLJ 221)

“6. Apart from the fact that the impugned order of termination of services is vitiated for the reasons that it has been passed without following the principles of natural justice in that the petitioner, has not been given any show cause notice why his services should not be terminated, before his order of probation was made, the order cannot also be sustained as the respondent is barred by the plea of equitable estoppel in questioning the appointment made by him in going back on his own orders regularising the services of the petitioner from the year 1967 and also declaring completion of his probation in the year 1969.”

(iii) Buddhi Nath Chaudhary and others vs. Abhai Kumar and others
(Appeal (Civil) No.1397 of 2001)

“The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the

contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in [Ram Sarup vs. State of Haryana & Ors.](#), 1979 (1) SCC 168; [District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. vs. M. Tripura Sundari Devi](#), 1990 (3) SCC 655; and [H.C.Puttaswamy & Ors. vs. The Honble Chief Justice of Karnataka High Court, Bangalore & Ors.](#), 1991 Supp. (2) SCC 421. Therefore, we must let the matters lie where they are.”

14. The learned AAG placed reliance upon the following decisions:

(i) W.P.No.22702 of 2013 (R.Janaki vs. the Teachers Recruitment Board, Rep. by its Member Secretary, Chennai and others)

This was a decision, where, a candidate possessing a degree in Zoology and ***who was not able to handle classes in Mathematics***; the appointment itself was in the year 2007 and termination was in the year 2017. Prior to cancellation show cause notice has been issued. It was a case where in the application form, the qualification has been wrongly mentioned.

Such is not the case on hand. Further, in the present case, the documents have already been destroyed.

(ii) 2013 (11) SCC 58 (Rakesh Kumar Sharma vs. State (NCT of Delhi) and others)

In this case, the letter of offer of appointment was issued which was provisional and it is subject to verification of educational qualification regarding eligibility, character verification etc. Further, the process of verification and notice of termination was issued within a very short span of time. The facts in the present case are totally different from the facts in the above cited decision.

(iii) 1993 Supp (2) SCC 611 (Ashok Kumar Sharma and another vs. Chander Shekher and another)

This is a case where the issue was whether the candidate must possess the requisite qualification on the date of application or it is enough if the candidate possesses the qualification on the date of interview. It was held that the candidate must possess the requisite qualification on the date of application, but, it was held that appointment made in that particular case need not be disturbed. It was also held that it is unreasonable to quash the appointment after 10 years. This case is more in support of the case of the petitioners.

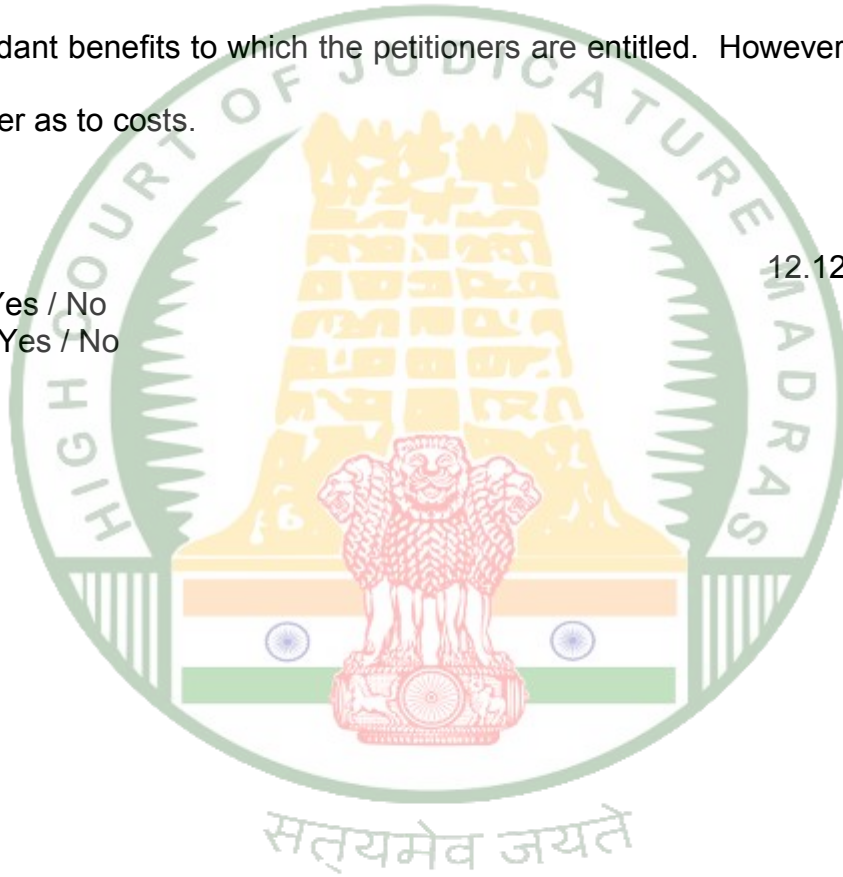
15. It is evident from the case of the petitioners that they had the basic

degree qualification, which is not disputed by the respondents. But the only ground on which the respondents cancelled the appointment of the petitioners is that the petitioners were not possessed of the requisite qualification on the date of their appointment and, therefore, they are liable for termination in view of clause 20. It is to be pointed out that the petitioners were appointed a decade before and the respondents have taken a long time to ascertain their qualification. In the interregnum, the petitioners have got themselves armed with the requisite qualification. Further, it is to be pointed out that the petitioners, though had a different degree, had fared well in the stream in which they were appointed by producing exemplary results continuously. Their merit speaks volumes through the results produced by them. The delay on the part of the respondents in taking action against the petitioners definitely sways the balance in favour of the petitioners. The delay caused by the respondents cannot be put against the petitioners at this belated point of time disabling them from continuing in service. The decision in *Ashok Kumar's case (supra)* relied on by the respondents comes to the aid of the petitioners. Further, the petitioners have also equipped themselves in Mathematics by obtaining the degree from open university. It cannot be said that the degree obtained from Open University is bad, as already the petitioners have got the basic degree in computer science. Therefore, the contention of the respondents that the degree obtained from Open University cannot be accepted is wholly unsustainable.

16. On a holistic consideration of the entire issue, this court is of the considered view that the order passed by the respondents is perverse and, per se unsustainable and deserves to be quashed. Accordingly, the writ petitions are allowed and the impugned orders are quashed. The respondents are directed to reinstate the petitioners and grant them all consequential monetary and attendant benefits to which the petitioners are entitled. However, there shall be no order as to costs.

12.12.2018

Index : Yes / No
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DR. S.VIMALA, J.

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